



(4310-4J-P)

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Kootenai Tribe of Idaho: Chapter 11 – Alcohol Control Act

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice.

SUMMARY: This notice publishes Chapter 11 – Alcohol Control Act for the Kootenai Tribe of Idaho. The Act regulates and controls the possession, sale and consumption of liquor within the Kootenai Tribe of Idaho’s Reservation. This Act allows for the possession and sale of alcoholic beverages within the jurisdiction of the Kootenai Tribe of Idaho’s Reservation, will increase the ability of the tribal government to control the distribution and possession of liquor within their reservation, and at the same time will provide an important source of revenue, the strengthening of the tribal government and the delivery of tribal services.

DATES: *Effective Date:* This Act is effective [insert date of publication in the FEDERAL REGISTER].

FOR FURTHER INFORMATION CONTACT: Betty Scissons, Tribal Government Specialist, Northwest Regional Office, Bureau of Indian Affairs, 911 NE 11th Avenue, Portland, OR 97232, Phone: (503) 231-6723; Fax: (503) 231-6731; or De Springer, Office of Indian Services, Bureau of Indian Affairs, 1849 C Street NW, MS-4513-MIB, Washington, D.C. 20240; Telephone (202) 513-7626.

SUPPLEMENTARY INFORMATION: Pursuant to the Act of August 15, 1953, Public Law 83-277, 67 Stat. 586, 18 U.S.C. 1161, as interpreted by the Supreme Court in *Rice v. Rehner*, 463

U.S. 713 (1983), the Secretary of the Interior shall certify and publish in the **Federal Register** notice of adopted liquor ordinances for the purpose of regulating liquor transactions in Indian country. The Kootenai Tribal Council adopted Resolution No. 11-12 to enact a new Chapter 11 – Alcohol Control Act on August 9, 2011.

This notice is published in accordance with the authority delegated by the Secretary of the Interior to the Assistant Secretary – Indian Affairs. I certify that the Kootenai Tribal Council duly adopted Resolution No. 11-12 to enact a new Chapter 11 – Alcohol Control Act on August 9, 2011.

Dated: April 2, 2012

Donald E. Laverdure
Principal Deputy Assistant Secretary – Indian Affairs.

Chapter 11 – Alcohol Control Act for the Kootenai Tribe of Idaho reads as follows:

CHAPTER 11 – ALCOHOL CONTROL ACT

This Act repeals the previous Chapter 11 Alcohol Control, approved September 1994, in its entirety and replaces it with this restated Chapter 11.

11-1. TITLE AND PURPOSE.

11-1.01. This Chapter shall be known as the KOOTENAI TRIBE OF IDAHO ALCOHOL CONTROL ACT.

11-1.02. The purpose of this Chapter is to regulate and control the distribution and sale of liquor within the territory identified in Article I of the Kootenai Tribe of Idaho Constitution in

conformance with federal law.

11-2. AUTHORITY.

11-2.01. Powers of Council. This Chapter is enacted pursuant to the authority vested in the Tribal Council of the Kootenai Tribe of Idaho under Article IV, Section 1 of the Kootenai Tribe of Idaho Constitution adopted April 10, 1947 and where applicable the Act of August 15, 1953 (Pub. L. 83-277, 67 Stat. 588, 18 U.S.C. 1161).

11-2.02. Territory. The Kootenai Tribe of Idaho exercises jurisdiction over the area of Indian trust lands acquired under the Act of February 8, 1887 (24 Stat. 388), and other trust lands acquired pursuant to the Act of May 10, 1926 (44 Stat. 202), and over any lands which may hereafter be acquired by or for the Kootenai Tribe of Idaho as set forth in Article I of the Kootenai Tribe of Idaho Constitution.

11-3. DEFINITIONS.

11-3.01. As used in this Chapter, except as may be specifically provided otherwise, the following definitions shall apply.

(1) "Alcohol" means that substance known as ethyl alcohol, hydrated oxide of ethyl, or spirit of wine, which is produced by the fermentation or distillation of grain, starch, molasses, or sugar, or other substance including all dilutions and mixtures of this substance.

(2) "Beer" means any malt beverage, flavored malt beverage, or malt liquor as these terms are defined in this chapter.

(3) "Kootenai Reservation" refers to the lands defined in section 11-2.02, above.

(4) "Licensee" means any Tribally-owned business entity licensed by the Tribal Council to own and/or operate a liquor outlet.

(5) "Liquor" includes the four varieties of liquor herein defined (alcohol, spirits, wine

and beer), and all fermented spirituous, vinous, or malt liquor or combination thereof, and mixed liquor, or otherwise intoxicating; and every liquor or solid or semisolid or other substance, patented or not, containing alcohol, spirits, wine and beer, and all drinks or drinkable liquids and all preparations or mixtures capable of all human consumption and any liquid, semisolid, solid, or other substances, which contain more than one percent of alcohol by weight shall be conclusively deemed to be intoxicating.

(6) "Malt Beverage" or "malt liquor" means any beverage such as beer, ale, lager, stout, porter, flavored malt beverages such as wine coolers, obtained by the alcoholic fermentation of an infusion or decoction of pure hops, or the pure extract of hops and pure barley malt or other wholesome grain or cereal in pure water containing not more than eight percent of alcohol by weight, and not less than one-half of one percent of alcohol by volume. Any such beverage containing more than eight percent of alcohol by weight shall be referred to as strong beer.

(7) "Liquor Outlet" means any business where liquor is served, sold and/or consumed.

(8) "Spirits" means any beverage which contains alcohol obtained by distillation and intended for consumption.

(9) "Tribal Council" or "Council" means the Tribal Council of the Kootenai Tribe of Idaho.

(10) "Tribe" means the Kootenai Tribe of Idaho.

(11) "Wine" means any alcoholic beverage obtained by fermentation of fruits or other agricultural products containing sugar and containing not more than twenty-four percent alcohol by volume and not less than one-half of one percent of alcohol by volume. For purposes of this chapter, "wine coolers" shall not be defined as wine but rather as a "malt beverage".

11-4. POSSESSION OF ALCOHOL

11-4.01. Possession of Alcohol is prohibited on the Kootenai Reservation, except as provided in this Chapter and in the locations identified in 11-4.02.

11-4.02. Tribal Council authorizes possession of alcohol at the Kootenai River Inn Casino & Spa, Twin Rivers RV Resort and such other locations as Tribal Council may designate by Resolution.

11-4.03. Violations of this Section

(1) Any individual found to be in possession of alcohol on the Kootenai Reservation in violation of this section is guilty of a crime under Section 4-5 of the Criminal Code.

(2) Any individual found to be in possession of alcohol on the Kootenai Reservation in violation of this section and not subject to the criminal jurisdiction of the Kootenai Tribe of Idaho is guilty of a regulatory infraction under Section 5-3.11.

11-5. SALES OF LIQUOR.

11-5.01. Licenses Required. No sales of alcoholic beverages shall be made within the Kootenai Reservation, except at a Tribally-licensed business.

11-5.02. Sales for Cash. All liquor sales within the Kootenai Reservation shall be on a cash only basis and no credit shall be extended to any person, organization, or entity, except that this provision does not prevent the use of major credit cards.

11-5.03. Sale for Personal Consumption. All sales shall be for the personal use and consumption of the purchaser. Resale of any alcoholic beverage purchased within the Kootenai Reservation is prohibited. Any person who is not licensed pursuant to this Chapter who purchases an alcoholic beverage and sells it, whether in the original container or not, shall be guilty of a violation of this Chapter and shall be subjected to paying damages to the Tribe as set forth herein.

11-5.04. Restrictions on Sales. No person shall sell, deliver or give, or cause or permit to be

sold, delivered or given, any alcoholic beverages to:

- (1) Any person under the age of twenty-one (21) years, proof of which shall be a valid Tribal identification card, driver's license, military identification card or any other validly issued government identification card;
- (2) Any person apparently or actually intoxicated;
- (3) A habitual drunkard; or
- (4) An interdicted person.

Any person who fails to comply with this section shall have committed a violation

11-6. LICENSING.

11-6.01. Eligibility. Only Tribally owned entities shall be eligible to sell or dispense liquor for consumption and must possess a valid license issued by the Tribe.

11-6.02. License Issued. Upon approval, Council shall issue a Tribally-owned entity a Tribal Liquor License for a period of not more than three (3) years which will entitle the license holder to maintain one liquor outlet within the Kootenai Reservation. The license is nontransferable. It shall be renewed at the discretion of the Tribal Council subject to the terms of this Chapter.

11-6.03. Liability for Bills. A Liquor Outlet License issued by the Council does not represent any promise or commitment by the Tribe to assume responsibility for the business. The operator is responsible for the payment of all Liquor Outlet bills and is forbidden to represent or give the impression to any supplier that he or she is an official representative of the Tribe. The license issued by the Tribe under this Chapter is contingent on the agreement of the operator to hold the Tribe harmless from all claims and liability related to the operation of the Liquor Outlet.

11-6.04. No Waiver. The operation of a Tribally-owned Liquor Outlet is not to be deemed a waiver of sovereign immunity of the Tribe.

11-7. RULES, REGULATIONS, AND ENFORCEMENT

11-7.01. Violations of This Chapter. Any liquor outlet operator who violates this Chapter shall be guilty of an offense and subject to a penalty as determined by the Tribal Court.

11-7.02. Loss of License. In addition to any penalties imposed, any license issued under this Chapter may be suspended or canceled by the Tribal Council after ten (10) days notice to the licensee. The decision of the Tribal Council shall be final.

11-7.03. Tribal Law. Nothing in this Chapter shall preempt the criminal offenses imposed by Section 4-5 of Chapter 4 Crimes or the Regulatory Infractions of Chapter 5 of the Kootenai Law and Order Code.

11-7.04. Non-Indian Offenders. Any individual who is in violation of this Chapter or Chapter 4 shall be subject to a Regulatory Infraction and/or exclusion and shall be subject to any State action against them.

11-8. VIOLATION - CIVIL PENALTIES, BURDEN OF PROOF

11-8.01. Any person violating any of the provisions of this Chapter, except where a specific civil fine is provided, shall be subject to a civil fine of not less than three hundred dollars (\$300) nor more than three thousand dollars (\$3000) and shall be subject to any other lawful penalty such as loss of license, forfeiture of contraband and/or exclusion from the Reservation. Any court in which a civil judgment against any licensee shall be entered shall forthwith certify a copy thereof to the Tribal Council and the Council shall thereupon give notice of intent to revoke any license issued to such person or to exclude the person from the Reservation under Chapter 12 of this Code.

11-8.02. A violation of any of the provisions of this Chapter by any person in any way acting on behalf of the licensee shall be presumed to be a violation by the licensee.

11-8.03. All violations of this Chapter must be proven to the satisfaction of the Court by a

preponderance of the evidence presented by any person qualified to appear before the Court on behalf of and at the direction of the Tribal Council.

11-9. OTHER PROVISIONS

11-9.01. Persons Not Allowed To Purchase, Possess Or Consume Liquor. Any person under the age of twenty-one (21) years who shall purchase, attempt to purchase, possess, or consume alcoholic beverages shall have committed a violation and shall be reported to the proper authorities.

11-9.02. Identification Required. It shall be a violation for any person to refuse to present valid identification indicating age when requested to do so by a licensee under this Chapter or the employee of such licensee or by a law enforcement officer with authority within the Kootenai Reservation if that person shall appear to be under the age of twenty-nine (29) and that person possesses, purchases, attempts to purchase or consumes alcoholic liquor, as defined by section 23-115, Idaho Code or beer as defined by section 23-1101, Idaho Code or is within a premises licensed to sell liquor by the drink at retail, or licensed to sell beer for consumption on the premises.

11-10. SUSPENSION AND REVOCATION OF LICENSE

11-10.01. Procedures. The Tribal Council may suspend or revoke a license issued in accordance with this Chapter for any violation of or failure to comply with the provisions of this Chapter or Idaho statute, or any rules and regulations promulgated pursuant to such laws. Procedures for suspension or revocation of licenses issued under this Chapter are the following:

(1) The Council shall give written notice of the alleged violations to the licensee and grant an opportunity to the licensee to challenge the allegations within thirty (30) days. The Council shall inform the licensee that it will suspend or revoke the license if no challenge is made within thirty (30) days.

(2) If a challenge is made, the Council shall set a time for hearing during a Council

meeting and immediately send written notice to the licensee and the complaining officer or individual of the date, time and place of the hearing.

(3) A licensee who makes a timely challenge to alleged violations shall have the right to present evidence, including testimony of witnesses, that the licensee did not commit the violations alleged. The person alleging the violations shall present evidence of the violations at the same meeting and failure to do so will result in dismissal of the complaint.

(4) The complaining party must prove the violations took place by a preponderance of the evidence.

11-10.02. Monetary Penalty. When the Council makes a determination to suspend a license, the licensee may petition the Council to substitute a monetary penalty in lieu of the license suspension.

If the Council determines such payment to be consistent with the purpose of this Chapter and is in the Tribal interest, it shall establish a payment in any amount not to exceed five thousand dollars (\$5,000). The licensee may reject the amount determined by the Council, and shall have the license suspended until the terms of the suspension are met. Upon payment of the amount established, the Council shall cancel the suspension. The Council shall cause any payment to be paid to the treasurer of the Tribe.

11-11. SEVERABILITY AND MISCELLANEOUS

11-11.01. Severability. If any provision or application of this Chapter is determined by review to be invalid, such adjudication shall not be held to render ineffectual the remaining portions of this chapter or to render such provisions inapplicable to other person or circumstances.

11-11.02. Prior Enactments. All prior enactments of the Tribal Council, which are inconsistent with the provisions of this Chapter, are hereby rescinded.

11-11.03. Idaho Law. To the extent required by federal law, all acts and transactions under this

Chapter shall be in conformity with the laws of the State of Idaho as required by 18 U.S.C. 1161.

11-11.04. Effective Date. This Chapter shall be effective upon adoption by the Tribal Council.

11-12. SOVEREIGN IMMUNITY

11-12.01. Nothing contained in this Chapter is intended to, nor does it in any way limit, alter, restrict, or waive the Tribe's sovereign immunity from unconsented suit or action.

1. Federal law imposes the requirement that this Chapter obtain approval of the Secretary of the Interior and published in the Federal Register.